

INNOCENCE PROJECT



Improving Eyewitness Identification in Montana

The Problem: Eyewitness Misidentification

Mistaken eyewitness identifications contributed to over 70 percent of the nation's DNA exonerations, making it the leading contributing factor to wrongful convictions. In Montana, eyewitness misidentification contributed to two of the three DNA exonerations in the state.



CASE IN POINT: Jimmy Ray Bromgard

Jimmy Ray Bromgard was convicted of raping an 8-year-old girl in Billings, MT based on a faulty victim identification and invalid forensic testimony. Police produced a composite sketch of the intruder, which an officer thought resembled Bromgard. The victim later identified him in a lineup. Bromgard served 15 years in prison before DNA evidence proved his innocence in 2002.

In 2008, Bromgard settled a civil lawsuit against the state of Montana for \$3.5 million. In December 2015, authorities charged 55-year-old Ronald Dwight Tipton with the assault after his DNA was matched to the DNA profile obtained from the victim's clothing.

The Solution: Evidence-Based Procedures

The National Academy of Sciences, the nation's premier independent scientific entity, the International Association of Chiefs of Police, the President's Task Force on 21st Century Policing, and many other organizations have recommended the following practices to improve the accuracy of witness identifications:

1. **Blind/Blinded Administration:** The officer administering the lineup is unaware of the suspect's identity, or if that is not practical, the administrator is "blinded" using a technique such as the folder shuffle method that prevents him or her from seeing which lineup member is being viewed by the witness. Blind/blinded administration prevents unintended cues or suggestiveness in the procedure.
2. **Instructions:** Prior to the procedure, witnesses should be instructed that the perpetrator may or may not be in the lineup and that the investigation will continue regardless of whether a witness makes an identification.
3. **Proper Use of "Non-Suspect" Fillers:** Non-suspect "fillers" used in the lineup should match the witness's description of the perpetrator, as opposed to the appearance of the suspect.
4. **Confidence Statements:** Immediately following the lineup procedure, the eyewitness should provide a statement, in his or her own words that articulates the level of confidence in the identification.

National Eyewitness ID Reform

Nationally, 15 states have uniformly adopted eyewitness identification best practices either by statute, court action or substantial voluntary compliance (CT, CO, GA, HI, MD, NJ, NV, NC, OH, OR, RI, TX, VT, WV, WI).

Timeline of Montana Eyewitness ID Reform Efforts

- **2012:** The Montana Law Enforcement Academy (MLEA) issues an eyewitness identification model policy that includes blind/blinded administration, witness instructions, proper use of fillers and witness confidence statements. New recruits are trained using the evidence-based model policy; however veteran officers may still be using traditional procedures.
- **April 2015:** The legislature passes HJ 14, authored by Rep. Frank Garner, calling for an interim study to develop a roadmap for uniform adoption of the MLEA model policy at the county and local law enforcement agency level. Supported by the Montana Police Protective Association, the Montana County Attorney Association and Montana Innocence Project, the study resolution passed the state legislature with bipartisan approval.
- **September 2015:** The Law and Justice Interim Committee held a hearing on HJ14. The Public Safety Officer Standards and Training Council (POST), MLEA and the Innocence Project developed a roadmap for voluntary statewide adoption of reforms by law enforcement.
- **January 12-13, 2016:** POST and the Innocence Project coordinated two statewide eyewitness identification trainings in Helena and Billings that were attended by 114 officers.
- **February 22, 2016:** POST sent the MLEA model policy and implementation tools to all 119 law enforcement agencies in the state.
- **March 14, 2016:** POST sent a compliance survey to agencies to assess the level of voluntary adoption of best practices.

Next Steps: If survey responses show that agencies covering 80 percent or more of the state's population have implemented best practices, it would obviate the need for legislation.